

Wage and Hour Division, Labor

§ 779.110

producer of the goods, the mere fact that the employee is employed by an independent employer will not justify a different answer. (See §§ 776.17(c) and 776.19 of this chapter.)

§ 779.107 Goods defined.

The term *goods* is defined in section 3(i) of the Act and has a well established meaning under the Act since it has been contained in the statute from the date of its enactment in 1938. A comprehensive statement of the meaning of the term “goods” is contained in part 776 of this chapter, which also cites the court cases in which the term was construed. The statutory definition of “goods” is set forth in § 779.14. It will be observed that the term “goods” includes any part or ingredient of the goods. Also that “goods” as defined in the Act are not limited to commercial goods, or articles of trade, or, indeed, to tangible property, but include “articles or subjects of commerce of any character.” Thus telegraphic messages have been held to be “goods” within the meaning of the Act (*Western Union Tel. Co. v. Lenroot*, 323 U.S. 490). Some of the “articles or subjects of commerce” which fall within the definition of “goods” include written materials such as newspapers, magazines, brochures, pamphlets, bulletins, and announcements; written reports, fiscal and other statements and accounts, correspondence, and other documents; advertising, motion pictures, newspaper and radio copy; art work and manuscripts for publication; sample books, letterheads, envelopes, shipping tags, labels, checkbooks, blankbooks, book covers, advertising circulars, and wrappers and other packaging materials.

§ 779.108 Goods produced for commerce.

Goods are “produced for commerce” if they are “produced, manufactured, mined, handled or in any other manner worked on” in any State for sale, trade, transportation, transmission, shipment or delivery, to any place outside thereof. Goods are produced for commerce where the producer intends, hopes, expects, or has reason to believe that the goods or any unsegregated part of them will move (in the same or

in an altered form or as a part or ingredient of other goods) in interstate or foreign commerce. If such movement of the goods in commerce can reasonably be anticipated by the producer when the goods are produced, it makes no difference whether he himself or the person to whom the goods are transferred puts the goods in interstate or foreign commerce. The fact that goods do move in interstate or foreign commerce is strong evidence that the producer intended, hoped, expected, or had reason to believe that they would so move. Goods produced to serve the movement of interstate commerce within the same State are also produced for commerce within the meaning of the Act, as explained in part 776 of this chapter.

§ 779.109 Amount of activities which constitute engaging in commerce or in the production of goods for commerce.

The Act makes no distinction as to the percentage, volume, or amount of activities of either the employee or the employer which constitute engaging in commerce or in the production of goods for commerce. However, an employee whose in-commerce or production activities are isolated, sporadic, or occasional and involve only insubstantial amounts of goods will not be considered “engaged in commerce or in the production of goods for commerce” by virtue of that fact alone. The law is settled that every employee whose activities in commerce or in the production of goods for commerce, even though small in amount are regular and recurring, is considered “engaged in commerce or in the production of goods for commerce”.

§ 779.110 Employees in retailing whose activities may bring them under the Act.

The discussion in §§ 779.103 to 779.109 included general reference to types of employees in the retail or service field whose individual activities constitute engagement in interstate or foreign commerce or in the production of goods for such commerce within the meaning of the Act. There are many classes of employees customarily employed by retail or service establishments or enterprises whose individual activities

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ordinarily constitute engagement in commerce or in the production of goods for commerce within the meaning of the Act. The groups of employees discussed in the following §§ 779.111 to 779.118, are illustrative only. There are other employees whose activities may be covered; also there are other activities performed by the groups discussed which would result in individual coverage under the Act.

§ 779.111 Buyers and their assistants.

Buyers and their assistants, employed by retail businesses, as a regular part of their duties, generally travel across State lines, or use the mails, telegraph, or telephone for interstate communication to order goods; or they regularly send or receive, across State lines, written reports, messages or other documents. These activities of such employees constitute engagement “in commerce” within the meaning of the Act.

§ 779.112 Office employees.

Similarly office employees of retail businesses who regularly and recurrently check records of and make payments for goods shipped to their employer from outside of the State, or regularly and recurrently keep records of or otherwise work on the accounts of their employer’s out-of-State customers, or who regularly and recurrently prepare or mail letters, checks, reports or other documents to out-of-State points, are engaged both in commerce and in the production of goods for commerce within the meaning of the Act. Likewise, timekeepers who regularly and recurrently prepare and maintain payrolls for and pay employees who are engaged in commerce or in the production of goods for commerce are themselves engaged in covered activities.

§ 779.113 Warehouse and stock room employees.

Warehouse and stock room employees of retail businesses who regularly and recurrently engage in the loading or unloading of goods moving in commerce, or who regularly and recurrently handle, pack or otherwise work on goods that are destined to out-of-

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State points are engaged in covered activities.

§ 779.114 Transportation employees.

Transportation employees of retail businesses, such as truck drivers or truck drivers’ helpers, who regularly and recurrently cross State lines to make deliveries or to pick up goods for their employer; or who regularly and recurrently pick up at rail heads, air, bus or other such terminals goods originating out of State, or deliver to such terminals goods destined to points out of State; and dispatchers who route, plan or otherwise control such out-of-State deliveries and pick ups, are engaged in interstate commerce within the meaning of the Act.

§ 779.115 Watchmen and guards.

Watchmen or guards employed by retail businesses who protect the warehouses, workshops, or store premises where goods moving in interstate or foreign commerce are kept or where goods are produced for such commerce, are covered under the Act.

§ 779.116 Custodial and maintenance employees.

Custodial and maintenance employees who perform maintenance and custodial work on the machinery, equipment, or premises where goods regularly are produced for commerce or from which goods are regularly shipped in interstate commerce are engaged in covered activities.

§ 779.117 Salesmen and sales clerks.

A salesman or a sales clerk who regularly and recurrently takes orders for, or sells, or selects merchandise for delivery to points outside the State or which are to be shipped or delivered to a customer from a point outside the State, i.e. drop shipments; or who wraps, packs, addresses or otherwise prepares goods for out-of-State shipments is performing covered activities.

§ 779.118 Employees providing central services for multi-unit organizations.

Employees providing central services for a multiunit organization may be engaged both “in commerce” and “in the production of goods for commerce”